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US EPA RECORDS CENTER REGION 5



436611

May 1, 2012

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Re: Response to General Notice Letter for Chemetco Superfund Site in
Hartford, Illinois by Resource Management Companies ("Resource
Management")

Dear Ms. Kerr:

Please let this serve as a further response by Resource Management Companies ("Resource Management") to the November 30, 2011 General Notice Letter relating to the above-mentioned site.

**INCORPORATION BY REFERENCE OF RESOURCE MANAGEMENT'S RESPONSE
TO THE AGENCY'S SECTION 104(e) REQUEST FOR INFORMATION**

Resource Management incorporates by reference (as is fully set forth herein verbatim) its detailed response ("Response") to the Agency's November 30, 2011 Section 104(e) Request for Information.

Moreover, Resource Management incorporates by reference responses by other "Steel Can" PRPs relating to the lack of liability nexus such parties have to CERCLA remedies being invoked at this site, as well as defenses to assertion/imposition of CERCLA liability.

RESOURCE MANAGEMENT IS NOT LIABLE UNDER CERCLA

As evidenced by Resource Management's corresponding response to the Agency's November 30, 2011 Section 104(e) Request of Information, all information relating to Resource Management and the Chemetco site demonstrate that Resource Management's sole contribution to this site were rinsed post-consumer, baled steel cans, a "Useful Product" by operation by both fact and law which Chemetco purchased from Resource Management for value for beneficial reuse.

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Arizona California Florida Illinois Indiana Massachusetts Minnesota Missouri New York Oregon Rhode Island Wisconsin

Again, and as set forth in exacting detail in Resource Management's corresponding Response to the Agency's Section 104(e) Request for Information, the physical and chemical composition of the "steel can" materials that Resource Management sold to Chemetco is uncontroverted. As set forth in exacting detail in Resource Management's Response to the Agency's Request for Information, the consistency of these steel cans is, for all intents and purposes, uniform in nature, these cans being typically produced from *Type L steel*. As further set forth in Resource Management's Section 104(e) Response, *Type L steel* is a form of base metal steel, extremely low in metalloids and residual elements, a steel that is commonly used for improved internal corrosive resistance for certain food product containers. **Put a different way, the composition and physical characteristics of consumer steel cans are such that they can be used for storage of food products consumed by the public, which, in and of itself demonstrates in dramatic fashion how devoid of any hazardous substances or other contaminants these cans are.**

(See also Resource Management's answer to the Agency's Section 104(e) Request Question 10).

As such, the materials sold by Resource Management to Chemetco are not "solid waste" (as defined by relevant provisions of CERCLA). Moreover, the "Useful Product" recyclable materials which were sold by Resource Management to Chemetco do not contain "hazardous substances" (as defined by operative provisions of CERCLA), or "hazardous waste" (as defined by RCRA). In summary, then, the threshold requirements for imposition of liability under CERCLA cannot be either factually or legally met with respect to Resource Management.

Moreover, as amply indicated by facts, details and circumstances set forth in Resource Management's Response to the Agency's Section 104(e) Request for Information, Resource Management only sold "Useful Product" material for value to Chemetco for beneficial reuse. Again, as such, the threshold requirements for imposition of liability under CERCLA cannot, in any way, be factually or legally met.

In addition to the reasons set forth as to why Resource Management cannot be found liable under CERCLA, Resource Management also qualifies foursquare for the Superfund Recycling Equity Act (SREA) CERCLA Section 127 exemption. Section 127 of CERCLA (42 U.S.C. § 9627) specifically exempts persons who "arrange for recycling of recyclable materials" from liability under Section 107(a)(3) and Section 107(a)(4). The post-consumer cans which Resource Management sold to Chemetco as "Useful Product" meet every SREA requirement. In the first instance, the rinsed and baled post-consumer steel cans which Resource Management sold to Chemetco squarely meet the definition of "recyclable material" under CERCLA Section 127(b). That provision, in pertinent part, provides as follows:

"For purposes of this section, the term 'recyclable material' means scrap paper, scrap plastic, scrap glass, scrap textile, scrap rubber (other than whole tires), scrap metal or spent lead acids, spent nickel cadmium and other spent batteries as well as minor amounts of material incident to or adhering to the scrap metal as a result of its normal and customary use prior to becoming scrap."
(Emphasis added).

As also set forth in detail in its Response to the Agency's Section 104(e) Request, the only "residual material" that would have been included in the post consumer steel cans would be non-hazardous, extremely de minimis amounts of food material or similar household product residue. As specifically noted by the Agency in its August, 2002 SREA Guidance (at Page 5 Footnote 7), any "residual material" that was once an essential part of the scrap during its normal and customary use prior to becoming scrap may be considered "minor amounts" of residual for purposes of meeting the definition of "recyclable materials" under CERCLA Section 127(d).

Moreover, the rinsed, baled post-consumer steel cans which Resource Management sold to Chemetco squarely meet the definition of "scrap metal" under Section 127(d)(3). In that definition, in pertinent part, provides as follows:

"Bits and pieces of metal parts (e.g., bars, turnings, rods, sheet or wire) *or metal pieces* that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars, which when warranted superfluous can be recycled, except for scrap metals that the administrator excludes from this definition." (Emphasis added).

Resource Management's material then squarely meets the definition of both "recyclable materials" and "scrap metal". Resource Management would also submit that in all respects, rinsed, baled post-consumer steel cans which, by physical and chemical makeup, contain not less than 98.695% iron are the classic, quintessential example of "recyclable material" to which the SREA exemption is meant to apply.

In addition, it is clear that in all respects and at all times, Resource Management exercised reasonable care. As noted by Resource Management's response to the Agency's Question 11(a), Question 17 and Question 18, the Steel Recycling Institute confirmed that the Chemetco Hartford Site was a legitimate purchaser of post-consumer steel cans prior to Resource Management selling steel cans to Chemetco. Moreover, on an ongoing basis, many governmental agencies (including Illinois EPA, Illinois Department of Environment and Natural Resources, Illinois Department of Commerce and Community Affairs, Illinois Recycling Association, the Institute of Scrap Recycling Industries and the National Recycling Coalition) specifically promoted the recycling of post-consumer steel cans for beneficial reuse to be sent to facilities such as Chemetco.

Lastly, Resource Management was an active participant in the Illinois Recycling Association during the entire time that Chemetco purchased post-consumer steel cans from Resource Management. Resource Management's Senior Vice President, Greg Maxwell, served on the Board of Directors of the Illinois Recycling Association during the entire time that Chemetco was purchasing post-consumer recyclable steel cans from Resource Management. *Notably*, also serving on the Illinois Recycling Association Executive Board were representatives from various governmental agencies, including the Illinois Environmental Protection Agency, the Illinois Department of Natural Resources, and the Illinois Department of Commerce and Economic Opportunity. In addition, an official from Madison County, Illinois (the county in which the Chemetco Site is located) served on the Association Board. Moreover, Madison County is an IEPA-delegated enforcement authority, and at no time did it raise any concerns about Chemetco.

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While, again, Resource Management reiterates and reasserts there is absolutely no basis in fact or law to impose liability under CERCLA against the Company and should be completely de-listed as a PRP, again, as a gesture of good faith cooperation, and in an effort to avoid the ongoing time, effort and expense associated with unnecessary continued participation in this process, Resource Management would consider an Agency offer for a special settlement pursuant to Section 122(g) of CERCLA (again, as set forth in greater detail in the Agency's November 30, 2011 General Notice Letter). However, as there are multiple reasons why CERCLA liability cannot be asserted against Resource Management, any de minimis party settlement offer must be minimal in nature.

In closing, again, in the spirit of good faith cooperation, Resource Management sincerely hopes (and trusts) that it can and will resolve its differences in this matter with USEPA. However, please be advised that failing resolution of this matter, Resource Management Companies will avail itself of (and vigorously assert and rely upon) any and all applicable defenses and remedies applicable in this matter.

Should you have any further questions concerning this matter, do not hesitate to contact me.

Sincerely,

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CFH:jl

cc: Thomas Martin, Associate Regional Counsel USEPA
Greg Maxwell, Senior Vice President, Resource Management